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No. 81-2236

In THE

Supreme Court of the United States

OCTOBER TERM, 1982

DAVID LOCKWOOD,

Appellant,

v.

JEFFERSON AREA TEACHERS ASSOCIATION,

Appellee.

On Appeal from the Supreme Court of Ohio

MOTION TO DISMISS APPEAL OR TO AFFIRM THE JUDGMENT BELOW

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QUESTIONS PRESENTED

1. Is a service fee (*i.e.*, an agency shop) provision in a collective bargaining agreement between a public school district and the union recognized as the exclusive representative of its teachers unconstitutional *unless* it is expressly authorized by a state statute, as opposed to being authorized by an organ of state government other than the legislature or by a judicial construction of state statutes that are not explicit on the point?

2. Is a teacher's individual employment contract with a public school district unconstitutionally impaired if he is held subject to the terms of a subsequently executed collective bargaining agreement between the district and the union recognized as the exclusive representative of its teachers, if the terms of the individual employment contract itself, well-settled principles of state law, and the understanding of the teacher at the time he entered into the individual employment contract, all contemplate that the collective bargaining agreement would take precedence?

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In The

Supreme Court of the United States

October Term, 1982

No. 81-2236

David Lockwood,

Appellant,

v.

Jefferson Area Teachers Association,

Appellee.

On Appeal from the Supreme Court of Ohio

MOTION TO DISMISS APPEAL OR TO AFFIRM THE JUDGMENT BELOW

Appellee Jefferson Area Teachers Association moves to dismiss this appeal from the judgment of the Supreme Court of Ohio, dated March 9, 1982, on the ground that the appeal does not present a substantial federal question, or alternatively, to affirm that judgment. *See* Rule 16.1(b) of this Court's Rules.

STATEMENT OF THE CASE

A. Facts

On April 25, 1978, appellant David Lockwood entered into an individual employment contract with the Jefferson (Ohio) Area Local Board of Education (Board), pursuant to which he was employed as a teacher for the 1978-79 school year. The contract was a standard, one-page

form that was used by most boards of education in the area. It provided in its entirety as follows:

> An Agreement entered into between David Lockwood of Rt. # 1, Box 97, Andover, Ohio, and the Board of Education of Jefferson Area Local School District, Ashtabula County, Ohio, the said teacher hereby agrees to teach in the public schools of said district for a term of two years, and also agrees to abide by and maintain the rules and regulations adopted by the said Board for the government of said schools of said district. And in consideration of such services, the said Board of Education agrees to pay said teacher for the school year 1978-1979, the sum of fourteen thousand eight hundred eighty and no/100 dollars. Entered into this 25th day of April, 1978.[1]

At the time appellant entered into the aforesaid contract, the Board was engaged in collective bargaining with appellee Jefferson Area Teachers Association, which had been officially recognized by the Board "as the sole and exclusive bargaining agent for all teachers . . . ." Article I, Section A, of the collective bargaining agreement, set forth in Juris. Stat. at 5. Appellant was aware that such collective bargaining was taking place and that any agreements reached between the Board and appellee would apply to him, the terms of his individual employment contract notwithstanding.[2]

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[1] On the same date, appellant also entered into a supplemental contract with the Board in which he agreed to supervise certain extracurricular activities for an additional stipend. This supplemental contract is not relevant to this appeal.

[2] Lockwood so testified at trial. *See* Statement of Proceedings, submitted to the Ashtabula County Court by appellee (appellant in that court), and approved by that court, at 24. As the evidence showed, collective bargaining between the Board and appellee traditionally has been commenced during the school year preceding the effective date of the collective bargaining agreement ultimately entered into. While collective bargaining is underway, individual employment contracts (with salaries that are based on the salary

On May 16, 1978, the Board and appellee entered into a collective bargaining agreement covering the 1978-79 school year. This was a comprehensive agreement that dealt in detail with the salaries, hours, and working conditions of appellant and all other teachers employed by the Board. According to the salary schedule in the collective bargaining agreement, appellant's salary for the 1978-79 school year was $16,440, rather than the $14,880 provided for in his individual employment contract. Throughout the school year, the Board paid the larger amount to appellant and he accepted it without objection. The economic fringe benefits provided to the teachers by the collective bargaining agreement exceeded by some $1,680 the benefits to which they were entitled under the collective bargaining agreement that was in effect at the time appellant entered into his individual employment contract. Throughout the 1978-79 school year, appellant accepted, again without objection, the improved economic fringe benefits.

There was in fact only one provision in the entire collective bargaining agreement in regard to which appellant lodged a protest: specifically, Article III, Section M, which read in relevant part as follows:

> In recognition of the Association's services to the bargaining unit, all members of the bargaining unit shall either be members of the Association or share

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schedule in effect at that time) are distributed to the teachers. But the teachers are in fact paid and otherwise governed in accordance with the terms of the collective bargaining agreement. The Superintendent of Schools explained the process as follows:

> "Upon ratification and approval of the master agreement by the Board, that master agreement becomes part of the Board's policy, and the Board is obligated to comply with its terms and conditions and provide the benefits contained in that agreement to its certified teachers. Accordingly, all terms and conditions of the master contract become a part of the individual employment agreements between the Board and its certified teachers . . . ." Statement of Proceedings, *supra*, at 20.

> in the financial support of the Association by paying to the Association a service fee . . . .

Set forth in Juris. Stat. at 5-6. Appellant was not a member of appellee, and under this provision he was obligated to pay a service fee of $83.13 for the 1978-79 school year, which was 50% of the dues required to be paid by members. Appellant refused to pay the fee.

B. Proceedings Below

In order to collect the service fee from appellant, appellee instituted an action in the Small Claims Division of the Ashtabula County Court, seeking judgment in the amount of $83.13, plus interest and costs. On May 23, 1979, that court denied relief, but on February 17, 1981 its judgment was reversed by the Ashtabula County Court of Appeals. The latter court entered judgment in favor of appellee for $83.13, plus costs.

On appeal, the Ohio Supreme Court affirmed the judgment of the court of appeals. In rejecting appellant's contention that the Board lacked authority under Ohio law to agree to the service fee provision, the Court stated initially that the Ohio statutes which set forth the general powers and responsibilities of a local board of education authorize it to enter into a collective bargaining agreement with the union recognized as the exclusive representative of its teachers "so long as such agreement does not conflict with or purport to abrogate the duties and responsibilities imposed upon the board of education by law." Appendix to Juris. Stat. (hereinafter "App.") at 2a-3a. Applying this principle to the issue before it, the Court held that the Board had statutory authority to enter into the challenged service fee provision.

With respect to Lockwood's contention that the service fee provision violated his rights under the First and Fourteenth Amendments to the United States Constitu-

tion, the Ohio Supreme Court stated that "*Abood v. Detroit Bd. of Edn.* (1977), 431 U.S. 209, settles all relevant constitutional questions." App. at 2a. It elaborated as follows:

> In *Abood*, the United States Supreme Court upheld the constitutionality of a Michigan statute which permitted a local government employer and a union to enter into an "agency shop" arrangement under which "every employee represented by a union—even though not a union member—must pay to the union, as a condition of employment, a service fee equal in amount to union dues." *Id.* at 211. The court approved the statutory scheme at least to the extent that non-member contributions supported the union as an exclusive collective bargaining representative. *Id.* at 222-224. Therefore, we need not comment further on the constitutional issue which appellant raises.

Id.

In response to appellant's argument that the service fee provision unconstitutionally impaired his individual employment contract, the Ohio Supreme Court began by citing its 1975 decision in *Rehor v. Case Western Reserve University*, 43 Ohio St. 2d 224, *cert. denied*, 423 U.S. 1018 (1975). The Court had held in *Rehor* that, as a matter of Ohio law, when a faculty member at a university enters into an individual employment contract " 'which do[es] not set forth in full the terms and conditions of employment, the university's employment policies, rules and regulations,' " even if adopted subsequent to the execution of the individual contract, " 'become part of the employment contract between the university and the faculty member.' " App. at 3a. "In light of *Rehor* . . .", the Court said, appellant's individual employment contract "does not necessarily exempt [him] from the terms of the [collective bargaining] agreement." App. at 4a. The Court also noted that appellant, in his individual employment contract, expressly had agreed "to abide by and

maintain the rules and regulations adopted by the . . ." Board, and the provisions of the collective bargaining agreement constituted such "rules and regulations." Accordingly, it concluded that appellant's contract had not been impaired when the Board held him subject to the service fee provision.

ARGUMENT

I. This Court's Decision in *Abood v. Detroit Board of Education* is Dispositive of the Facial Constitutionality of the Service Fee Provision in Question [3]

In *Abood v. Detroit Board of Education*, 431 U.S. 209 (1977), this Court held that a service fee [*i.e.*, an agency shop] provision in a collective bargaining agreement between the Detroit Board of Education and the Detroit Federation of Teachers, as the exclusive representative for that City's teachers, was on its face constitutional. The service fee in that case had been agreed to pursuant to a Michigan statute that expressly authorizes a public employer and a union, if they wish, to include such a provision in their collective bargaining agreement. Mich. Comp. Laws § 432.210(1)(c). The instant case likewise involves a constitutional challenge to the facial validity of a service fee provision in a collective bargaining agreement between a public school district and the union recognized as the exclusive representative of its teachers. It differs from *Abood* in that Ohio, unlike Michigan, does not have a statute that *expressly* authorizes a public employer and a union to include such a provision in their

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[3] By "facial constitutionality" we refer to this Court's conclusion in *Abood* that "an agency shop provision in a collective bargaining agreement covering governmental employees is, *as such*, constitutionally valid . . . ." 431 U.S. 209, 217 (1977) (emphasis added.) The instant appeal does not raise any question as to the specific union activities for which the service fee may be expended over objection, *id.* at 232-237, the appropriate remedy available to objecting service fee payers, *id.* at 237-241, or other subsidiary matters addressed in *Abood*.

collective bargaining agreement. The service fee provision in question was agreed to pursuant to state statutes of a more general nature that have been construed by the Ohio Supreme Court as providing the necessary authorization. Focusing upon this difference, appellant contends that *Abood* has application only when there is *express* statutory authorization for a service fee provision and that the instant case, therefore, presents a substantial federal question left unanswered by that decision.

The fulcrum for this Court's decision in *Abood* is a deference to the state's policy judgment that it would promote labor peace to permit a public employer and a union to enter into an agreement requiring employees who obtain the benefits of union representation to share the cost. As we demonstrate below, there is nothing in the *Abood* decision itself or in any other decision of this Court to suggest that the state's policy judgment is entitled to any less deference if it is reflected in an action taken by an organ of state government other than the legislature (Section A) or a judicial construction of more general state statutes that are not explicit on the point (Section B).

A. Authorization by the state legislature is not a *sine qua non* for the facial constitutionality of a service fee provision in a public sector collective bargaining agreement

Appellant begins his argument by asserting that:

> In the Absence of a Statute Authorizing Compulsory Unionism Public Employees Have a Constitutional Right to Refrain From Providing Financial Support To A Union.

Juris. Stat. at 11.

In support of this assertion, he points out that this Court in *Abood* noted that "Michigan has enacted legislation authorizing . . ." a service fee provision and referred specifically to the "legislative judgment" reflected in that

statute. *See, e.g.*, 431 U.S. at 223-24; Juris. Stat. at 13-14.[4]

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[4] Based upon these comments, appellant appears to be arguing that a service fee provision will pass constitutional muster only if it is authorized by a state statute, and this is the argument to which we respond in text. Certain of appellant's other comments indicate, however, that this may not accurately reflect his position.

Appellant concludes his analysis of *Abood* with the statement that "[u]nless and until the Ohio Legislature says he is *required* to provide financial support to his union representative, he is free—that is, he has the right—to withhold such support." Juris. Stat. at 15 (emphasis added). If appellant is suggesting that a *mandate* by the state legislature is a prerequisite to constitutionality, he urges a position that is inconsistent with *Abood*. In *Abood* this court was not dealing with a situation in which the Michigan Legislature had said that a non-member was required to provide financial support to the union. The assessment of the Michigan legislature merely was that such a requirement might under appropriate circumstances contribute to labor peace, but it left to individual public employers the decision as to when those circumstances existed. Accordingly, it was the Detroit Board of Education that *required* non-members of the Detroit Federation of Teachers "to provide financial support" to the union when it agreed to include a service fee provision in the collective bargaining agreement.

Nor is it entirely clear that appellant views any action by the *state legislature itself* as essential. Thus, in order to illustrate the type of "legislative judgment" pursuant to which an "invasion [of First Amendment rights] is constitutionally justified . . .", Juris. Stat. at 14, appellant cites *Breard v. Alexandria*, 341 U.S. 622 (1951), which involved a *local ordinance* enacted by a *city council*. This suggests that the critical distinction for appellant may not be between the state legislature and local legislative bodies, such as school boards, but rather between the legislative and other branches of state government (*i.e.*, the executive and judicial branches). But this distinction does not entirely square with the importance that appellant attaches to the fact that the Governor of Ohio on two occasions vetoed public employee collective bargaining statutes that, among other things, expresaly authorized a service fee provision. Juris. Stat. at 15-17. It is not necessary for present purposes to determine precisely which of these theories appellant is pursuing, since, as we demonstrate in the text, his argument fails in either event.

But these statements by this Court hardly can be taken to mean that the existence of the Michigan statute was essential to the decision: inasmuch as *Abood* involved a state statute, it is difficult to see how the case could have been decided without discussing it. There is nothing in the Court's analysis, however, to suggest that the First Amendment principles which were set forth turn upon whether the state chooses this or some other means to express its policy judgment *vis-a-vis* the contribution that a service fee provision can make to labor peace. Indeed, this Court explicitly has rejected the notion that the outcome in cases such as this—*i.e.*, in which the issue is whether state action impacting on First Amendment rights is justified by the governmental interests involved—depends on whether the balance is made by the state legislature, as opposed to some other organ of state government. Thus, in *Hughes v. Superior Court*, 339 U.S. 460 (1950), plaintiff based his First Amendment challenge on the fact that the policy prohibiting certain picketing had been fashioned by a state court rather than by the state legislature. This Court summarily disposed of this argument, declaring:

> The fact that California's policy is expressed by the judicial organ of the State rather than by the legislature we have repeatedly ruled to be immaterial [citing cases]. For the Fourteenth Amendment leaves the States free to distribute the powers of government as they will between their legislative and judicial branches [citing cases]. '[*R*]*ights under that amendment turn on the power of the State, no matter by what organ it acts.*'

Id. at 466-467. (Emphasis added.)

Consistent with the above, this Court on numerous occasions has upheld actions taken by local school boards and other municipal agencies despite their impact on First Amendment rights when those agencies had deter-

mined that the governmental interests sought to be furthered were of suitable importance and were properly advanced by the actions in question.[5] In none of these cases did this Court inquire into whether the state legislature had authorized or endorsed the action in question, nor did it ever suggest that such an inquiry was in any way relevant to the outcome. To the contrary, this Court consistently has accorded to these local policy judgments the same presumption of validity that attaches to the judgments of the state legislature.[6]

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[5] *See, e.g., Grayned v. City of Rockford*, 408 U.S. 104, 114, 121 (1972) ("The Rockford City Council has made the basic policy choices . . . . Rockford's modest restriction on some peaceful picketing represents a considered and specific legislative judgment that some kinds of expressive activity should be restricted"); *Hynes v. Mayor of Oradell*, 425 U.S. 610, 616-17 (1976) (dictum) (noting constitutional authority of municipality to regulate soliciting and canvassing); *Breard v. City of Alexandria, supra*, 341 U.S. at 640-41, 644-45 (sustaining municipal anti-solicitation ordinance); *Lehman v. City of Shaker Heights*, 418 U.S. 298, 304 (1974) (plurality opinion) (ban on political advertisements on public rapid transit system justified as reflecting "reasonable legislative objectives advanced by the city in a proprietary capacity"). *Cf. Village of Belle Terre v. Boraas*, 416 U.S. 1 (1974) (sustaining village zoning ordinance prohibiting more than two unrelated individuals from residing together); *Young v. American Mini Theatres, Inc.*, 427 U.S. 40 (1976) (sustaining city zoning ordinance limiting the showing of adult films); *Cleveland Board of Education v. LaFleur*, 414 U.S. 632, 650 (1974) (sustaining rule of School *Board of Chesterfield County, Virginia*, regarding reemployment of teachers following childbirth).

[6] *See, Harrah Independent School District v. Martin*, 440 U.S. 194, 198 (1979); *Kelley v. Johnson*, 425 U.S. 238, 247 (1976). *Cf. also Village of Belle Terre, supra*, 416 U.S. at 1 (describing zoning ordinance adopted by village of 700 people as a "line drawn by a legislature"); *Lehman v. City of Shaker Heights, supra*, 418 U.S. at 304 (discussing city's "reasonable legislative objectives").

B. Assuming, *arguendo*, that a service fee provision in a public sector collective bargaining agreement is unconstitutional unless it is authorized by the state legislature, the necessary authorization exists here

In asserting that "The State Of Ohio Has Not Enacted Legislation Authorizing Agency Shop [*i.e.*, service fee] Agreements," Juris. Stat. at 15, appellant simply ignores the decision of the Supreme Court of Ohio: that Court held that the Ohio statutes *do* authorize a school board to include a service fee provision in its collective bargaining agreement with the union, albeit not explicitly.

Appellant concedes—as he must—that the decision of the Ohio Supreme Court is grounded on a construction of Ohio statutes governing the powers and responsibilities of local boards of education. He contends, however, that the Court misconstrued these statutes in holding that they authorize the Board to agree to the challenged service fee provision.[7] Even if accepted canons of statutory construction supported appellant in this regard (which in fact they do not), it would not give rise to a federal question appropriate for review by this Court. The decision of the Ohio Supreme Court is conclusive as to whether the Board's action was authorized by state law. See, *Reinman v. Little Rock*, 237 U.S. 171, 176, (1915) ("The decision of the state court of last resort is conclusive upon the point that the ordinance under consideration is within the scope of the powers conferred by the state legislature upon the city council of Little Rock"). And see generally *Abood*, *supra*, 431 U.S. at 232-233 ("[T]he state court's construction of the Michigan statute is authoritative

[7] Specifically, appellant contends that the state statutes which the Ohio Supreme Court construed as authorizing the challenged provision "originated in antiquity . . ." (Juris. Stat. at 21) "long before there was any thought of agency shops" (*id.* at 18); and appellant asserts that by construing those statutes to authorize a service fee provision the Court improperly engaged in "a legislative function" and arrived at "an overbroad and unwarranted interpretation of an otherwise valid enactment . . . ." (*id.* at 20-21).

. . . .") ; *Missouri ex rel. Hill v. Dockery*, 191 U.S. 165, 171 (1903) *Murdock v. City of Memphis*, 20 Wall. 590 (1875).[8]

Accordingly, even if appellant was correct in asserting that a service fee provision in a public sector collective bargaining contract is facially constitutional only when authorized by the state legislature, the necessary authorization exists here: as authoritatively construed by Ohio's court of last resort, the state statutes authorize the

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[8] In criticizing the Ohio Supreme Court's construction of Ohio law, appellant notes that in 1975 and 1977 the Governor vetoed bills passed by the state legislature which would expressly have authorized service fee provisions. Juris. Stat. at 15-19. (The bills in question also would have authorized public employee strikes and compulsory arbitration, to which the Governor likewise objected. App. 30a-41a.) Although appellant suggests that those legislative developments argue against construing Ohio law as authorizing the challenged provision, the fact remains that it is for the Ohio Supreme Court, not this Court, to construe Ohio law. If the issue were open, however, we simply would note that even had the Ohio legislature *rejected* (and not merely failed to override the vetoes of) the bills in question, such action would not be tantamount to a legislative decision to preclude service fee provisions, nor would it settle the meaning of existing Ohio statutes that bear on that subject. *Cf. Girouard v. United States*, 328 U.S. 61, 69-70 (1946); *Jackson Transit Authority v. Amalgamated Transit Union*, —— U.S. ——, 50 U.S.L.W. 4603, 4605 n. 8 (U.S. June 7, 1982).

City of Madison, etc. v. Wisc. Emp. Rel. Comm'n, 429 U.S. 167 (1976), which appellant cites on page 21 of his Juris. Stat., provides no support for his position. In *City of Madison* the issue was not so much whether the Wisconsin Supreme Court properly had construed the state statute in question, but whether that construction (which this Court indicated "standing alone, would not ordinarily be open to our review . . .", *id.* at 174, n. 5) violated the constitutional rights of plaintiffs.

In this connection, appellant's complaint that the Ohio Supreme Court acted "legislatively" in this case, even if well-taken, would not give rise to a federal question. "It of course rests with each state to determine in what form and by what agencies its legislative power may be exerted." *King Mfg. Co. v. Augusta*, 277 U.S. 100, 103 (1928).

Board to agree to the challenged provision. All that remains, then, of appellant's attempt to distinguish the instant case from *Abood* is the fact that the statutory authority in Michigan is *expressly* set forth, whereas in Ohio it is derived from statutes of a more general nature. It is frivolous even to suggest that this provides a sufficient basis for distinctions in First Amendment rights.

In sum, this case falls squarely within the ambit of *Abood*, and the appeal does not present a substantial federal question for review by this Court.

II. Inasmuch as appellant's individual employment contract was not impaired, this appeal does not present any question under the Contract Clause

Appellant contends that in holding him subject to the service fee provision in the collective bargaining agreement, the Board "altered the terms of its prior contract with [him] to his detriment," and that "a classic case of the constitutional impairment of a contract is presented by these facts." Juris. Stat. at 22. This contention fails at the threshold: since the service fee provision was incorporated into appellant's individual employment contract, there was no impairment of that contract.

Appellant's individual employment contract expressly obligated him "to abide by and maintain the rules and regulations adopted by" the Board. The provisions in the collective bargaining agreement between the Board and appellee, including the service fee provision, constitute "rules and regulations adopted by" the Board. *See Abood*, *supra*, 431 U.S. at 253 (Powell, J., concurring in judgment); *id.* at 228-229 (Opinion of the Court); *Dayton Teachers Assn. v. Dayton Board of Education*, 41 Ohio St. 2d, 127, 134 (1975).

Moreover, even if appellant's contract did not by its terms incorporate the provisions in the collective bargaining agreement, this would in any event be the result as

a matter of Ohio law. In *Rehor v. Case Western Reserve University, supra*, the Ohio Supreme Court held that when a university faculty member enters into a standard-form individual employment contract which does not set forth the relevant conditions of his employment, the university's rules and regulations, even if adopted after the execution of that contract, are incorporated into it. As the Ohio Supreme Court concluded here, "[i]n light of *Rehor* . . .", appellant's individual employment contract did not "exempt [him] from the terms of the [collective bargaining] agreement." App. 4a.

And, finally, appellant testified at trial that he was aware when he entered into his individual employment contract that any agreement reached by the Board and appellee in the then ongoing collective bargaining would apply to him. See p. 2, n. 2, *supra*. Indeed, appellant hardly could have claimed otherwise since (A) the standard-form individual employment contract did not set forth any terms of his employment other than that he would teach for a year at a specified salary and "abide by and maintain the rules and regulations adopted by [the] Board for the government of [the] schools . . . ."; (B) as the Superintendent of Schools explained, the practice in the Jefferson Area School District (where appellant had taught for several years) was for the Board to enter into a bare-bones employment contract with each teacher while collective bargaining was ongoing, with the understanding that the subsequently executed collective bargaining contract would "become a part of the individual employment agreements . . . .", see p. 3, n. 2, *supra*; and (C) during the 1978-79 school year, appellant accepted without objection the salary provided for in the collective bargaining agreement, despite the fact that it was higher than that called for in his individual employment contract, and the increased fringe benefits.

There is no need to belabor the point. Since the Ohio Supreme Court concluded that the provisions of the col-

lective bargaining agreement, including the challenged service fee provision, were incorporated into appellant's individual employment contract,[9] his contract was not impaired. Article I, Section 10, of the Constitution does not even come into play.[10]

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[9] The state court's finding as to the nature of appellant's contractual expectations, while not conclusive in this Court, are entitled to great weight and should be accepted "unless manifestly wrong." *Hale v. State Board*, 302 U.S. 95, 101 (1937); *Indiana ex rel. Anderson v. Brand*, 303 U.S. 95, 100 (1938). As demonstrated in the text, the Ohio Supreme Court's findings were manifestly *right*.

[10] Since, as established in the text, this appeal does not involve any alteration of appellant's contract, the questions of whether and under what circumstances the governmental interests advanced by a service fee provision would justify the impairment of a teacher's individual employment contract are not presented for decision here.

It is appropriate to point out, however, that even if the application of the service fee provision to appellant *was* contrary to the terms of his individual employment contract, this only would indicate the *potential* applicability of the Contract Clause; it would not establish a violation of the Clause. Not every breach of contract by a state violates the Contract Clause. To make out a violation, it first would be necessary to conclude that the required $83.13 service fee not only breached appellant's contract, but "impair[ed] the obligation" of that contract. (In this connection, appellee emphasized in the state courts "that no risk exists to [appellant's] employment [and] that what is sought here is simply the enforcement of a contractual obligation by an action for damages." Statement of Proceedings at 25.) Even if an impairment were deemed to exist, the Board's action still would pass muster under the Contract Clause, given the modest nature of the "impairment," together with the fact that the Board's action was "reasonable and necessary to serve an important public purpose." *United States Trust Co. v. New Jersey*, 431 U.S. 1, 25 (1977). *See also Allied Structural Steel Co. v. Spannaus*, 438 U.S. 234, 245 (1978); *El Paso v. Simmons*, 379 U.S. 497 (1965). In this regard, the important governmental interests served by public-sector service fee provisions were made clear in *Abood*. *See* 431 U.S. at 217-223, 224-225, 229. And more generally, a school board properly may conclude that the public interest requires that "[i]ndividual contracts, no matter what the circumstances that justify their execution or what their terms, . . .

CONCLUSION

For the reasons set forth above, this Court should dismiss the appeal for want of a substantial federal question, or, in the alternative, affirm the decision of the Ohio Supreme Court.

Respectfully submitted,

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not . . . be used to forestall bargaining or to limit or condition the terms of the collective agreement." *See, J. I. Case Co. v. Labor Board*, 321 U.S. 332, 337 (1944).